

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Tristan Wolusky


v.

Case No. 22-cv-345-SE-AJ

Northern NH Correctional Facility, Warden
Corey Riendeau

ORDER

After due consideration of the objection filed (doc. no. 96), and construing the motions to conduct discovery (doc. nos. 95 and 98) as supplements thereto, the court herewith approves the Report and Recommendation of Magistrate Judge Andrea K. Johnstone dated February 28, 2025. The court interprets the argument in and attachment to the petitioner's March 5, 2025 motion to conduct discovery (doc. no. 95) as a new argument and evidence in support of Claim 3, that his conviction violated due process because it was based on Pinette's perjury. As explained in the R&R, the petitioner cannot defeat summary judgment on that claim unless he has some evidence that the state knowingly used false or perjured testimony. Doc. no. 94 at 23. But even viewing the evidence contained in the petitioner's motion in the light most favorable to him, the context provided in the transcript that the petitioner attached to his motion makes clear that the prosecutor's statements do not create a material issue of fact as to whether the state knowingly used such testimony. For that reason, and the reasons explained in the R&R, the Warden's motion for summary judgment (doc. no. 73) is granted as to all claims. The petitioner's motion for summary judgment on Claim 1(a) (doc. no. 85) is denied, and the Warden's motion to dismiss Claim 1(a) (doc. no. 86) is denied as moot. The court will rule on the petitioner's motion to amend (doc. no. 90) and motion to stay (doc. no. 91) in due course.


Samantha D. Elliott
United States District Judge

Date: March 31, 2025

cc: Tristan Wolusky, pro se
Counsel of Record